THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.M.No. 19480-CII of 2006 &
Civil Revision No.5109 of 2006

Date of Decision: 26 - 9 - 2006

Subhash Chander **.....Petitioner**

v.

Smt.Shanti Devi and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Harkesh Manuja, Advocate
for the petitioner.

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P.S.PATWALIA, J. (Oral)

The present revision petition has been filed by the tenant challenging order dated 17.5.2006 and 1.6.2006 passed by the Appellate Authority, Hisar. The revision petition suffers from a delay of 23 days. For seeking condoning of delay the petitioner has filed C.M.No.19480-CII of 2006.

An eviction petition was filed by the landlord in November, 1995 seeking eviction of the petitioner-tenant. Eviction was sought on the ground of non payment of rent, building having become unfit and unsafe for human habitation and on the ground that the petitioner-tenant had ceased to occupy the building. As the petitioner-tenant tendered the arrears of rent upto November, 1995 the said ground no longer survived. However the petition was allowed on the remaining two grounds. Against that order, an appeal was preferred by the petitioner-tenant and on 29.12.2005 the eviction of the petitioner-tenant was stayed by the Appellate Authority. Subsequently, the landlord filed an application that the petitioner-tenant had not deposited the arrears from December, 1995 onwards and

therefore the eviction could not be stayed unless he deposits entire arrears of rent. The petitioner-tenant appeared and contended that the landlord could not claim arrears for a period exceeding three years. The Appellate Authority on 17.5.2006 passed the following order:-

> "Shri S.K.Gupta, learned counsel for the applicant states that payment of arrears of rent was not made a condition for stay on the ejectment order at the time of admission of this appeal. The learned counsel also contended that the respondent cannot claim arrears for a period exceeding three years. In the interest of justice one more opportunity is granted to the respondent to pay arrears of rent, failing which ejectment order would become executable and stay would vacated."

It is clear that the contention of counsel for the petitioner-tenant that the arrears cannot be claimed for a period exceeding three years did not find favour with the Appellate Authority and he was granted one opportunity to pay the arrears of rent failing which the ejectment order would become executable and stay would be vacated. Since the arrears of rent were not paid by the petitioner-tenant, by order dated 1.6.2006 the stay of execution was vacated. The said order is as hereunder:-

> "Arrears of rent not paid despite opportunity. Further time sought is declined as no ground there or, has been made out. In this view of the matter, it is ordered that stay on execution of order under challenge is hereby vacated. Now to come upon 10.8.2005 for arguments."

It is against the aforesaid two orders dated 17.5.2006 and 1.6.2006 that the present revision petition has been filed.

Learned counsel for the petitioner-tenant submits that as per the second proviso to Section 13(2)(i) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 the landlord is not entitled to claim arrears of rent for a period

exceeding three years immediately preceding the date of application. He therefore contends that even in 2005 the Appellate Authority could not have directed the petitioner to deposit the arrears of rent for a period exceeding three years immediately preceding the date of appeal.

I find no merit in the contention raised by the learned counsel. A reading of the provision would show that a landlord can claim arrears of rent for a period of three years immediately preceding the date of application filed by him under Section 13 of the Act. The application in the present case was filed in November, 1995. Therefore the landlord was within his right to claim rent from December, 1992 onwards. Even otherwise the facts of this case would show that the tenant had continued to occupy the premises right from 1995 onwards without paying a single paisa towards rent. He is now seeking interim relief from the Court. The Appellate Authority rightly ordered that to seek the relief of stay of his eviction, he should first clear all the arrears of rent which had accrued during the pendency of the appeal. However he failed to tender the arrears of rent before the Appellate Authority. Even today at the time of hearing on being asked whether the petitioner-tenant was willing to deposit the entire arrears of rent as a result of which his possession could be protected, the answer was in the negative. The learned counsel for the petitioner submitted that the petitioner-tenant is not willing to deposit the entire arrears of rent from December, 1995 onwards. He states that he can only deposit the arrears for the preceding three years. In these circumstances I am of the opinion that the petitioner is not entitled to any relief in this revision.

For the reasons aforementioned, the application seeking condonation of delay and the revision petition are dismissed.

(P.S.PATWALIA)
JUDGE

September 26, 2006.

RC